

### **REMARKS**

This is a full and timely response to the non-final Office Action of November 5, 2003. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Fourth Response, claims 1, 2, 4, 7-12, 15-17, and 20-46 are pending in this application. Claim 38 is directly amended herein, and claims 41-46 are newly added. Further, claims 3, 5, 6, 13, 14, 18 and 19 have been canceled without prejudice or disclaimer. It is believed that the foregoing amendments add no new matter to the present application.

### **Response to §103 Rejections**

In order for a claim to be properly rejected under 35 U.S.C. §103, the combined teachings of the prior art references must suggest all features of the claimed invention to one of ordinary skill in the art. See, e.g., *In Re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). In addition, “(t)he PTO has the burden under section 103 to establish a *prima facie* case of obviousness.” *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988) (Citations omitted). Furthermore, the Federal Circuit has stated that “(i)t is impermissible, however, to simply engage in hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.” *In re Gorman*, 933 F.2d 982, 987, 18 U.S.P.Q.2d 1885 (1991).

## Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Moore* (U.S. Patent No. 5,649,402) in view of *Pennell* (6,028,566). Claim 1 presently reads as follows:

1. A system for supporting wireless communication equipment, comprising:
  - a foundation;
  - a guyed tower*** fixedly attached to said foundation; and
  - a pole tower*** fixedly attached to said foundation and ***extending through a middle region of said guyed tower.*** (Emphasis added).

Applicant respectfully asserts that the alleged combination of *Moore* and *Pennell* fails to suggest or teach at least the features of pending claim 1 highlighted hereinabove.

In rejecting claim 1, it is asserted in the Office Action that:

“Moore teaches a self-supported tower, not a guyed tower surrounding the pole tower. However, guyed towers and self-supported towers are both conventional towers and are well known in the art to support antennas, as taught by Pennell (column 5, lines 27-35). Pennell indicates that self-supporting towers or guyed towers could be utilized in his invention. Guyed towers and self-supporting towers are considered functional equivalents in the art, therefore it would be obvious to one having ordinary skill in the art at the time the invention was made to use a guyed tower with Moore’s pole tower.”

Applicant respectfully traverses the assertion that it would have been obvious to “use a guyed tower with *Moore*’s pole tower,” as alleged in the Office Action. In this regard, “(t)he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.” *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q. 2d 1780 (Fed. Cir. 1992). Applicant asserts that the alleged modification of *Moore* is not properly based on teachings from the cited art but is rather based on impermissible hindsight reconstruction of Applicant’s invention.

In this regard, Applicant notes that there must not only be a suggestion to combine the functional or operational aspects of the combined references, but that the Federal Circuit also requires the prior art to suggest both the combination of elements and the structure resulting

from the combination. *Stiftung v. Renishaw PLC*, 945 Fed.2d 1173 (Fed. Cir. 1991). Therefore, in order to sustain an obviousness rejection based upon a combination of any two or more prior art references, the cited art must properly suggest the desirability of utilizing the modified structure, and merely alleging that the modified structure is a “functional equivalent” of the structure described by a prior art reference is insufficient for establishing a *prima facie* case of obviousness.

To better illustrate the foregoing concepts, Applicant refers to *Continental Can Co., USA, Inc. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In that case, the claimed invention was directed to a ribbed bottom structure for reinforcing a plastic container. The patent in suit claimed that each container rib was hollow. The prior art consisted of several patents directed to ribbed configurations comprising the support structure of plastic container bottoms. The primary reference was a *Marcus* patent, which disclosed a plastic container having a ribbed bottom, wherein the ribs were solid. A *Pentaloid* patent was a secondary reference which, when inverted, closely resembled the claimed invention. The Federal Circuit, however, quickly dismissed this simple modification as constituting an obvious change by stating “(a)lthough a prior art device could have been turned upside down, that did not make the modification obvious unless the prior art fairly suggested the desirability of turning the device upside down.” *Continental Can* at 1270.

Moreover, Applicant asserts that the Office Action fails to show that the *cited art* provides a motivation or desirability for replacing the self supporting tower of *Moore* with a guyed tower, as alleged in the Office Action. Thus, Applicant asserts that the Office Action fails to establish a *prima facie* case of obviousness and that the rejection of claim 1 is based on impermissible hindsight reconstruction of Applicant’s invention.

In addition, it is well settled law that the teachings of the prior art must be considered “as a whole” for what they suggest to one of ordinary skill in the art. “On the issue of

obviousness, the combined teachings of the prior art as a whole must be considered.” *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 225 U.S.P.Q. 20, 25 (Fed. Cir. 1985).

Applicant asserts that when the prior art is properly viewed “as a whole,” it becomes readily apparent that the alleged combination of *Moore* and *Pennell* would not have been obvious to one of ordinary skill in the art.

In this regard, there is nothing in the cited art to suggest that a “pole tower” should be erected within a “guyed tower” for the purpose of providing mechanical support *to the “guyed tower,”* as taught by the instant application. In fact, *Moore* specifically teaches that the self supported tower 11 is to provide mechanical support *to the inner column 29*. See column 3, lines 12-13. There is nothing in *Moore*, or any of the other cited art references, to indicate the desirability of placing a “pole tower” within a “guyed tower” for the purpose of supporting the “guyed tower.”

Furthermore, despite the Office Action assertions that guyed towers and self supported towers are “functional equivalents,” Applicant respectfully asserts that the design of guyed towers and self supported towers are substantially different. In this regard, lateral support in a self supported tower is provided by the tower’s structural beams, whereas lateral support in a guyed tower is substantially provided by guyed wires. Indeed, self supported towers of the type shown by *Moore* inherently have greater lateral stability and less sway than most, if not all, guyed towers. In addition, Applicant submits that, according to the teachings of *Moore* (see column 3, lines 12-13), it would appear to one of ordinary skill in the art that erecting a “pole tower” within a “guyed tower” would substantially increase the lateral loads placed *on the “guyed tower”* in a generally unpredictable fashion as the “pole tower” and the “guyed tower” sway. Thus, one of ordinary skill in the art, upon reading *Moore*, would be discouraged from erecting a “pole tower” within a “guyed tower.”

In direct contrast to the teachings of *Moore*, the instant application teaches that erecting a pole tower within a guyed tower can actually enhance the stability *of the guyed tower*. Moreover, when the prior art teachings and present invention are properly considered “as a whole,” it becomes apparent that *Moore* teaches away from the present invention, as defined by claim 1, and *Moore*, therefore, should not be used to reject this claim. “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant... in general, ***a reference will teach away if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant.***” *In re Gurley*, 2 F.3d 551, 31 U.S.P.Q.2d 1130, 1131 (Fed. Cir. 1994). (Emphasis added).

For at least the foregoing reasons, Applicant respectfully requests that the Examiner reconsider and withdraw the 35 U.S.C. §103 of claim 1.

In maintaining the 35 U.S.C. §103 rejection of claim 1, it is asserted in the outstanding Office Action that:

“In response to applicant’s argument that the examiner’s conclusion of obviousness in the claims is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant’s disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the (modification) for the rejection is found in the knowledge generally available to one of ordinary skill in the art.”

Noting that the burden is on the Patent Office to make a showing that the alleged modification is “found in knowledge generally available to one of ordinary skill in the art,” Applicant respectfully asserts that the Office has failed to adequately make such a showing for at least the reasons set forth above.

It is further asserted in the Office Action that:

“In response to applicant’s argument that there is nothing in Moore, or any of the other cited art references, to indicate desirability of placing a ‘pole tower’ within a ‘guyed tower’ for the purpose of supporting the ‘guyed tower’, the examiner recognizes the argument, however, Moore was not the only reference used to indicate these limitations, Pennell was used to teach the guyed tower and, the applicant should refer to the 103 Rejection section of the office action above for further clarity on how the examiner interprets the references to the limitations provided within the claims.”

Applicant acknowledges that *Moore* was not the only reference used in the Office Action.

However, the teachings of *Moore* cannot be ignored when considering the teachings of *Pennell*.

“(P)rior art references before the tribunal must be read as a whole and consideration must be given where the references diverge and teach away from the claimed invention.” *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1481 1 U.S.P.Q.2d 1291 (Fed. Cir. 1986), *cert. denied*, 482 U.S. 909 (emphasis added). Further, Applicant asserts that there is nothing in *Pennell* to suggest that a “pole tower” should be erected within a “guyed tower,” and it does not appear that the Office Action even alleges that *Pennell* provides such a suggestion. In this regard, it appears that the Office Action uses *Pennell* in an attempt to show that guyed towers and pole towers are “functionally equivalent.” For at least the reasons set forth above, Applicant asserts that the design of guyed towers is substantially different than that of pole towers and traverses the foregoing Office Action allegation. Nevertheless, even if it is assumed *arguendo* that guyed towers and pole towers are “functionally equivalent” and that it would be obvious to replace the “outer tower” of *Moore* with a “guyed tower,” Applicant has shown above that one of ordinary skill in the art, under such circumstances, would be discouraged from

then erecting a “pole tower” within *Moore*’s modified “outer tower.” Thus, Applicant submits that, when considering the alleged combination of *Pennell* and *Moore* as whole, including the teachings that teach against the claimed invention, the cited art fails to provide a sufficient motivation for carrying out the claimed invention, as defined by claim 1.

In addition, it is asserted in the Office Action that the alleged “pole tower” of *Moore* “is considered to provide substantial support to the outer tower since it is attached to the tower at midpoint of the tower section.” Such an assertion is in direct contrast to the teachings of *Moore*, which as described above, suggest that it is the alleged “outer tower” that supports the “pole tower.” For at least the above reasons, Applicant asserts that the alleged combination of *Moore* and *Pennell* is insufficient for rejecting claim 1 under 35 U.S.C. §103.

#### **Claims 2, 4, 7-10, and 30-33**

Claim 2, 4, 7-10, and 30-33 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Applicant submits that the pending dependent claims 2, 4, 7-10, and 30-33 contain all features of their respective independent claim 1. Since claim 1 should be allowed, as argued hereinabove, pending dependent claims 2, 4, 7-10, and 30-33 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). In addition, these dependent claims recite patentable features that make them allowable notwithstanding the allowability of pending claim 1.

For example, claim 7 reads as follows:

7. The system of claim 1, wherein said guyed tower is comprised of at least two joined guyed tower sections, and ***wherein said pole tower is fixedly attached to said guyed tower at a midpoint of one of said sections.*** (Emphasis added).

In rejecting claim 7, it is asserted in the Office Action that the features of claim 7 are shown by Figures 1a and 1b of *Moore*. Applicant respectfully traverses this assertion and submits that nothing in Figures 1a and 1b indicates that the alleged “pole tower” 29 is attached to the alleged “outer tower” at a midpoint of an “outer tower” section. Further, the instant application discloses that attaching a “pole tower” to a “midpoint” of a “guyed tower” section helps the “pole tower” to provide better support to the “guyed tower.” See Figure 16, Figure 23, and page 17, line 18, through page 18, line 8. *Moore*, on the other hand, teaches that the alleged “outer tower” provides support to the alleged “pole tower.” See column 3, lines 12-13. Moreover, the cited art and, in particular, *Moore* provide no motivation for attaching the alleged “pole tower” to a midpoint of a section of the alleged “outer tower.” For at least the foregoing reasons, Applicant asserts that the cited art fails to suggest at least the features of claim 7 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 7 is improper and should be withdrawn, notwithstanding the allowability of claim 1.

Further, claim 8 reads as follows:

8. The system of claim 1, wherein said guyed tower is comprised of at least two joined guyed tower sections, and ***wherein said pole tower is fixedly attached to said guyed tower at an interface between said guyed tower sections.*** (Emphasis added).

In rejecting claim 8, it is asserted in the Office Action that the features of claim 8 are shown by Figures 1a and 1b of *Moore*. Applicant respectfully traverses this assertion and submits that nothing in Figures 1a and 1b indicates that the alleged “pole tower” is attached to the alleged “outer tower” at an interface between sections of the “outer tower.” Further, the instant application discloses that attaching a “pole tower” to a “guyed tower” at an interface between sections of the “guyed tower” helps the “pole tower” to provide better support to the “guyed tower.” See Figure 16, Figure 23, and page 17, line 18, through page 18, line 8. *Moore*, on the other hand, teaches that the alleged “outer tower” provides support to the alleged “pole tower.”



See column 3, lines 12-13. Moreover, the cited art and, in particular, *Moore* provide no motivation for attaching the alleged “pole tower” to an interface between sections of the alleged “outer tower.” For at least the foregoing reasons, Applicant asserts that the cited art fails to suggest at least the features of claim 8 highlighted above. Accordingly, the 35 U.S.C. §103 rejection of claim 8 is improper and should be withdrawn, notwithstanding the allowability of claim 1.

In addition, claim 30 recites “wherein said pole tower is positioned such that at least one point on said guyed tower engages said pole tower *as said guyed tower sways.*” (Emphasis added). Applicant submits that the cited art and, in particular, *Moore* fail to teach and, in fact, teach against such features. In this regard, *Moore* specifically teaches that “Tie braces 41, 43 and 45 provide lateral support to column (29), preventing it from swaying or bending due to wind.” Column 3, lines 27-29. Thus, it appears that the column 29 is rigidly coupled to the tower 11 and, therefore, does not “engage” the tower 11 as it sways. Accordingly, the cited art fails to teach or suggest each of the features of claim 30, and the rejection of this claim should be withdrawn, notwithstanding the allowability of independent claim 1.

Furthermore, claim 33 recites “wherein said single pole tower provides substantial support to said guyed tower.” The Office Action alleges that the “pole tower” of *Moore* “is considered to provide substantial support to the outer tower since it is attached to the tower at (the) midpoint of the tower section.” However, for at least the reasons set forth hereinabove in the arguments for allowance of claim 1, Applicant asserts that alleged “pole tower” of *Moore* does *not* appear to provide “substantial support” to the alleged “outer tower.” See column 3, lines 12-13. Accordingly, the Office Action fails to establish a *prima facie* case of obviousness with respect to claim 33, and the 35 U.S.C. §103 rejection of this claim should, therefore, be withdrawn, notwithstanding the allowability of claim 1.

### Claim 11

Claim 11 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 11 presently reads as follows:

11. A system for supporting wireless transmission equipment, comprising:  
a foundation;  
***a guyed tower*** fixedly attached to said foundation; and  
***a means for absorbing bending moments that act on said guyed tower, said absorbing means fixedly attached to said foundation and extending through a middle region of said guyed tower.*** (Emphasis added).

For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* and *Pennell* fails to suggest at least the features of claim 11 highlighted hereinabove. Accordingly, Applicant respectfully submits that the rejection of claim 11 is improper and should be withdrawn.

### Claims 12 and 15-18

Claims 12 and 15-18 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Applicant submits that the pending dependent claims 12 and 15-18 contain all features of their respective independent claim 11. Since claim 11 should be allowed, as argued hereinabove, pending dependent claims 12 and 15-18 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). In addition, these dependent claims recite patentable features that make them allowable notwithstanding the allowability of pending claim 1.

As an example, claim 15 recites “wherein said absorbing means is fixedly attached to said guyed tower at midpoint of one of said (guyed tower) sections.” For at least the reasons set forth hereinabove in the arguments for allowance of claim 7, Applicant asserts that the cited art fails to suggest at least the foregoing features of claim 15. Accordingly, the 35 U.S.C. §103 rejection of the claim 15 should be withdrawn, notwithstanding the allowability of claim 11.

In addition, claim 16 recites “wherein said absorbing means is fixedly attached to said guyed tower at an interface between said guyed tower sections.” For at least the reasons set forth hereinabove in the arguments for allowance of claim 8, Applicant asserts that the cited art fails to suggest at least the foregoing features of claim 16. Accordingly, the 35 U.S.C. §103 rejection of the claim 16 should be withdrawn, notwithstanding the allowability of claim 11.

#### **Claim 20**

Claim 20 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 20 recites the step of “erecting a pole tower within a middle region of said guyed tower.” For at least the reasons set forth hereinabove in the arguments for allowance of pending claim 1, Applicant asserts that the combination of *Moore* and *Pennell* fails to suggest such features. Accordingly, Applicant respectfully submits that the rejection of claim 20 is improper and should be withdrawn.

#### **Claims 21-28, 34, and 35**

Claims 21-28, 34, and 35 presently stand rejected in the Office Action under 35 U.S.C. §103 as purportedly being unpatentable over *Moore* in view of *Pennell*. Applicant submits that the pending dependent claims 21-28, 34, and 35 contain all features of their respective independent claim 20. Since claim 20 should be allowed, as argued hereinabove, pending dependent claims 21-28, 34, and 35 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). In addition, these dependent claims recite patentable features that make them allowable notwithstanding the allowability of pending claim 20.

For example, claim 23 recites “fixedly attaching said pole tower to said guyed tower at a midpoint of one of said (guyed tower) sections.” For at least the reasons set forth hereinabove

in the arguments for allowance of claim 7, Applicant asserts that the cited art fails to suggest at least the foregoing features of claim 23. Accordingly, the 35 U.S.C. §103 rejection of the claim 23 should be withdrawn, notwithstanding the allowability of claim 20.

In addition, claim 24 recites “fixedly attaching said pole tower to said guyed tower at an interface between said guyed tower sections.” For at least the reasons set forth hereinabove in the arguments for allowance of claim 8, Applicant asserts that the cited art fails to suggest at least the foregoing features of claim 24. Accordingly, the 35 U.S.C. §103 rejection of the claim 24 should be withdrawn, notwithstanding the allowability of claim 20.

Further, claim 27 reads as follows:

27. The method of claim 20, wherein said pole tower is sectional, wherein said guyed tower has a bottom end and a top end opposite of said bottom end, said bottom end fixedly attached to said foundation, and wherein said erecting step includes the steps of:  
***lowering a bottom section of said pole tower from said top end through said guyed tower to said foundation;***  
***lowering another section of said pole tower from said top end through said guyed tower to said bottom section; and***  
***securing said bottom section to said other section.*** (Emphasis added).

Applicant asserts that the cited art fails to suggest that a “bottom section” of the alleged “pole tower” of *Moore* is to be lowered through a “top end” of the alleged “outer tower” to a “foundation.” Further, it does not appear that the Office Action even alleges that such features are suggested by the cited art. Accordingly, Applicant respectfully asserts that the Office Action fails to establish a *prima facie* case of obviousness with respect to claim 27, and the rejection of this claim should be withdrawn, notwithstanding the allowability of claim 20.

Also, claim 34 recites “positioning said pole tower within said middle region such that at least one point on said guyed tower engages said pole tower ***as said guyed tower sways.***” (Emphasis added). For at least the reasons set forth hereinabove in the arguments for allowance of claim 30, Applicant submits that the cited art fails to suggest at least the foregoing features of

claim 34. Thus, the rejection of claim 34 is improper and should be withdrawn, notwithstanding the allowability of independent claim 20.

In addition, claim 35 recites the step of “providing substantial support to said guyed tower via said pole tower.” For at least the reasons set forth hereinabove in the arguments for allowance of claim 33, Applicant asserts that the foregoing features of claim 35 are not suggested by the cited art. Accordingly, the rejection of claim 35 should be withdrawn, notwithstanding the allowability of independent claim 20.

### **Claim 29**

Claim 29 presently stands rejected under 35 U.S.C. §103 as allegedly being unpatentable over *Moore* in view of *Pennell*. Claim 29 presently reads as follows:

29. A method for increasing a load capacity of a previously erected guyed tower, comprising the steps of:  
*erecting a pole tower within an inner region of said previously erected guyed tower*; and  
attaching said pole tower to a foundation. (Emphasis added).

Applicant submits that the cited art fails to suggest or provide a motivation for erecting a “pole tower” within a “guyed tower” *after* the “guyed tower” has previously been erected. Further, it appears that the Office Action fails to even allege that such features are suggested by the cited art. Accordingly, the Office Action fails to establish a *prima facie* case of obviousness with respect to claim 29, and the 35 U.S.C. §103 is, therefore, improper and should be withdrawn.

### **Claims 36, 37, 41, and 42**

Claims 36 and 37 presently stand rejected under 35 U.S.C. §103 as purportedly being unpatentable over *Moore* in view of *Pennell*. Further, claims 41 and 42 have been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 36, 37, 41, and 42 contain all features of their respective independent claim 29. Since claim 29

should be allowed, as argued hereinabove, pending dependent claims 36, 37, 41, and 42 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). In addition, these dependent claims recite patentable features that make them allowable notwithstanding the allowability of pending claim 29.

For example, claim 36 recites “positioning said pole tower within said inner region such that at least one point on said guyed tower engages said pole tower *as said guyed tower sways*.” (Emphasis added). For at least the reasons set forth hereinabove in the arguments for allowance of claim 30, Applicant submits that the cited art fails to suggest at least the foregoing features of claim 36. Thus, the rejection of claim 36 is improper and should be withdrawn, notwithstanding the allowability of independent claim 29.

In addition, claim 37 recites the step of “providing substantial support to said guyed tower via said pole tower.” For at least the reasons set forth hereinabove in the arguments for allowance of claim 33, Applicant asserts that the foregoing features of claim 37 are not suggested by the cited art. Accordingly, the rejection of claim 37 should be withdrawn, notwithstanding the allowability of independent claim 29.

### **Claim 43**

Claim 43 has been newly added via the amendments set forth herein. Claim 43 presently reads as follows:

43. A method for increasing a load capacity of a previously erected guyed tower, said previously erected guyed tower having a bottom section, a top section, and at least one middle section between said bottom section and said top section, comprising the steps of:

passing each of a plurality of sections of said pole tower through said top section of said previously erected guyed tower and into an inner region of said previously erected guyed tower; and

attaching each of said sections of said pole tower to at least one other respective section of said pole tower within said previously erected guyed tower thereby forming at least a portion of said pole tower within said previously erected guyed tower.

Applicant asserts that the cited art fails to disclose or suggest each of the above features of claim 43. Accordingly, Applicant respectfully submits that claim 43 is allowable.

#### **Claims 44-46**

Claims 44-46 have been newly added via the amendments set forth herein. Applicant submits that the pending dependent claims 44-46 contain all features of their respective independent claim 43. Since claim 43 should be allowed, as argued hereinabove, pending dependent claims 44-46 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

#### **Allowable Subject Matter**

Claims 38-40 are allowed, and claim 32 has been indicated as allowable by the outstanding Office Action if this claim is rewritten to include the limitations of its base claim. Claim 32 includes all of the features of its respective base claim 1, which is allowable as indicated hereinabove. Thus, claim 32 is allowable as a matter of law. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

### **CONCLUSION**

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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